

ORDER

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 12, 2008, and the Clerk of Court entered Plaintiff's "Statement of the Case" on the same date. Subsequently, on September 4, 2008, the Clerk of Court entered Plaintiff's objections to the Report. At the direction of the Court, Defendants filed replies to the objections on September 15, 2008, and September 27, 2008. The Court has exhaustively reviewed Plaintiff's three-page "Statement of the Case" and his forty-page objection submission, but finds the arguments contained therein to be without merit.

Thus, after a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein.

Accordingly, it is the judgment of this Court that Defendants' motions to dismiss and/or for summary judgment be **GRANTED** as to all of Plaintiff's federal claims, and that this case be **DISMISSED**, with prejudice, as to all of Plaintiff's federal claims.* To the extent that Plaintiff has raised any state causes of action, however, those claims are **DISMISSED**, without prejudice, so that Plaintiff may pursue those claims in state court if he wishes to do so.

Moreover, inasmuch as Plaintiff's submissions can be construed to contain any appeals of the Magistrate Judge's pretrial rulings concerning the appointment of counsel, discovery issues, or any other matter, the rulings of the Magistrate Judge are **AFFIRMED**.

*In their motion for summary judgment, Defendants ask that the Court to assess a strike against Plaintiff pursuant to 28 U.S.C. § 1915. Inasmuch as the Fourth Circuit has suggested that such an action at the summary judgment stage is inappropriate, the Court declines Defendants' invitation. *Pressley v. Rutledge*, 82 Fed.Appx. 857, 858, 2003 WL 2299339, at *1 (4th Cir. 2003) ("Because . . . [the Plaintiff's] action was dismissed upon a grant of summary judgment to the Defendants, we vacate the district court's order to the extent it assessed a strike pursuant to 28 U.S.C. § 1915(g)(2000).").

IT IS SO ORDERED.

Signed this 29th day of September, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.